

ROUTING SLIP

Problem Form No. _____

TAN: 064210

DATE: 7/28/95

☐ Recommendations

- ☐ Form 48
- ☐ Form 115
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- ☐ Issue Area
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Jennifer Westfall-McGrail



Comptroller General
of the United States

307187

Washington, D.C. 20548

Decision

Matter of: R.P. Richards Construction Co.

File: B-260965

Date: July 17, 1995

C. Patrick Stoll, Esq., Herrig & Vogt, and Albert M. Giacomazzi for the protester.
Arthur Thibodeau, Esq., and Christopher Bellomy, Esq.,
Department of the Navy, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody,
Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Bid bond citing incorrect solicitation number is nevertheless acceptable where it otherwise clearly identifies the solicitation to which it pertains by correctly stating the bid opening date and by referencing a maximum penal amount which correlates with the bid price, and where there is no other ongoing procurement to which the incorrect solicitation number could refer.

DECISION

R.P. Richards Construction Co., the fourth low bidder under invitation for bids (IFB) No. N47408-95-B-0009, issued by the Naval Facilities Engineering Command for repairs to the Community Center, Building 1171, at the Naval Construction Battalion Center, Port Hueneme, California, protests the acceptability of the bid bonds of the three lowest bidders. The protester contends that the three lowest bidders all failed to cite the correct solicitation on their bid bonds, raising questions as to the enforceability of the bonds and requiring their rejection. The protester also complains that both the low and the third low bidders failed to submit copies of their bids along with the originals, as required by the IFB.

The IFB, which required a bid bond of 20 percent of the bid amount, was issued on February 7, 1995, under an outdated solicitation number, N47408-94-B-1018. This identification number, which had been assigned during fiscal year 1994, had been replaced by identification number N47408-95-B-0009 at the time the project was synopsisized in the Commerce Business Daily on November 22, 1994 (*i.e.*, during fiscal year 1995).

Bidders were formally notified by amendment 0006, issued on March 8, 1995, that all references to N47408-94-B-1018 were to be replaced with N47408-95-B-0009.

Thirty bids were received by the March 17 opening date. Gamma Constructors, Inc. was the lowest bidder; THI Group, Inc., Carroll Construction Company, and the protester were second, third, and fourth low respectively. Gamma's bid bond provided for a penal sum of 20 percent of the bid price, in an amount not to exceed \$90,000. The bond identified the bid by its opening date of March 17, 1995, and by solicitation number N47408-95-6-0009. THI's bid bond also furnished the required 20-percent security. It identified the bid by the original solicitation number, N47408-94-B-1018; by the project description "Repair Community Center, Bldg. 1171, Naval Construction Battalion Center, Port Hueneme, CA"; and by the bid opening date of March 17, 1995. Carroll Construction Co.'s bid bond provided the required 20-percent security and identified the bid by the opening date of March 17, 1995 and by solicitation number 408-94-B-1018.

The protester argues that all three bid bonds should be rejected as unacceptable since all three cite incorrect solicitation numbers. The agency agrees with the protester with regard to Carroll's bond, but contends that both Gamma's and THI's bonds are acceptable since both identify the solicitations to which they pertain with sufficient clarity that there can be no question as to their enforceability.

The submission of a required bid bond is a material condition with which a bid must comply at the time of bid opening to be responsive. Blakelee Inc., B-239794, July 23, 1990, 90-2 CPD ¶ 65. The sufficiency of a bid bond depends on whether the surety is clearly bound by its terms; where the liability of the surety is not clear, the bond is defective. Techno Eng'g & Constr., Ltd., B-243932, July 23, 1991, 91-2 CPD ¶ 87. If at the time of bid opening it is uncertain whether the bidder has furnished a legally binding bond, the bid must be rejected as nonresponsive. Federal Acquisition Regulation (FAR) § 28.101-4(a); A & A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

The solicitation number referenced in a bid bond is a material element of the bond affecting its acceptability. Joseph B. Fay Co., B-241769.2, Mar. 1, 1991, 91-1 CPD ¶ 234. A bid bond that cites an incorrect solicitation number may nevertheless be acceptable where there are clear indicia on the face of the bond that otherwise identify it with the correct solicitation. Kirila Contractors, Inc., 67 Comp. Gen. 455 (1988), 88-1 CPD ¶ 554. Such indicia may include correct identification of the bid opening date; accurate

description of the type of services sought; and/or designation of a maximum penal sum in an amount which correlates with the amount of the bid. SEEMA, Inc., B-255884, Apr. 13, 1994, 94-1 CPD ¶ 256; Todd's Clearing and Grading, B-245617, Jan. 13, 1992, 92-1 CPD ¶ 56. Another significant factor to be considered in determining the acceptability of such a bond is whether or not there are other ongoing procurements to which the misstated solicitation number could reasonably refer. Kirila Contractors, Inc., supra.

Here, there were indicia on the face of Gamma's bond that clearly identified it with the instant solicitation; in addition, there were no other ongoing procurements to which the misstated solicitation number could have referred. First, the bond correctly identified the bid opening date as March 17, 1995, and the agency reports that no other bid openings were scheduled for--or held--by the Naval Facilities Engineering Command Contracting Office that day. Second, Gamma's bond provided for a penal sum of 20 percent of the bid price in an amount not to exceed \$90,000. Twenty percent of Gamma's bid price of \$449,100 is \$89,820, an amount very close to the stated limit. Finally, the only error in the solicitation number noted on the bond was that the number "6" had been substituted for an upper case "B" in the position used to denote the type of instrument used for the solicitation.¹ Since, according to the agency, it does not assign the same series of numbers to different types of instruments, there is no way that an error in this position could lead to confusion as to the solicitation to which the bond pertains.

Since we find that Gamma's bond was clearly identified with the IFB and was therefore acceptable and since the agency reports that Gamma's bid was otherwise responsive and that it is a responsible bidder, we need not consider whether THI's bond was also acceptable.

With regard to the protester's complaint that Gamma failed to include a copy of its bid with the original, as required by the solicitation's cover page (Standard Form 1442), the failure to return the number of copies of signed bids

¹Either the letter "B" (indicating an invitation for bids) or the letter "R" (indicating a request for proposals) generally appears in this position.

required by the invitation is a minor informality that may be waived or corrected at the discretion of the contracting officer. FAR § 14.404-5; International Shelter Sys., Inc., 71 Comp. Gen. 142 (1992), 92-1 CPD ¶ 38.

The protest is denied.

Ronald Berger
for Robert P. Murphy
General Counsel